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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Report of the Select Committee on the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Gift-tax Act, 1958 was presented to Lok Sabha on the 10th May, 1972:—

COMPOSITION OF THE COMMITTEE

Shri Bhagwat Jha Azad—*Chairman*

MEMBERS

2. Shri Virendra Agarwala
3. Shri K. Baladhandayutham
4. Shri Chhotey Lal
5. Chaudhry Dalip Singh
6. Shri Anandi Charan Das
7. Shri K. R. Ganesh
8. Shri H. R. Gokhale
9. Shrimati V. Jeyalakshmi
10. Shri Chiranjib Jha
11. Shri Dinesh Joarder
12. Shri A. Kevichusa
13. Shri K. Mallanna

14. Shri Nageshwararao Meduri
15. Shri Piloo Mody
16. Shri Tarkeshwar Pandey
17. Shrimati Sahodrabai Rai
18. Chowdhury Ram Sewak
19. Shri Ram Surat Prasad
20. Shri Birender Singh Rao
21. Shri P. Narasimha Reddy
22. Shri Mulki Raj Saini
23. Shri N. K. P. Salve
24. Shri S. C. Samanta
25. Shri Era Sezhiyan
26. Shri Sheo Pujan Shastri
27. Shri Satyandra N. Sinha
28. Shri T. Sohan Lal
29. Shri V. Tulsiram
30. Shri Y. B. Chavan

LEGISLATIVE COUNSEL

1. Shri K. K. Sundaram, *Joint Secretary and Legislative Counsel.*
2. Shri P. B. Venkatasubramanian, *Joint Secretary and Legal Adviser.*
3. Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel.*
4. Shri S. Ramaiah, *Deputy Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri B. D. Pande, *Secretary.*
2. Shri R. D. Shah, *Chairman (CBDT) and Additional Secretary.*
3. Shri K. E. Johnson, *Member (WT&A) and Joint Secretary.*
4. Shri M. B. Palekar, *Member (I.T.) and Joint Secretary.*
5. Shri R. R. Khosla, *Secretary, Central Board of Direct Taxes.*
6. Shri O. P. Bhardwaj, *Secretary, Central Board of Direct Taxes.*
7. Shri Balbir Singh, *Secretary, Central Board of Direct Taxes.*

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the *Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Gift-tax Act, 1958 was referred, having been authorised to submit the Report on their behalf, present their Report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 12th August, 1971. The motion for reference of the Bill to a Select Committee was moved in the House by Shri Y. B. Chavan, Minister of Finance on the 17th November, 1971 and was discussed and adopted on the same day.

3. The Committee held 13 sittings in all.

4. The first sitting of the Committee was held on the 23rd November, 1971 to draw up their programme of work. The Committee decided to take evidence of the Constitutional experts and the experts in the field of taxation law, accountancy and valuation of property.

5. 15 memoranda|representations|notes on the Bill were received by the Committee from different individuals/associations etc.

6. At their 2nd, 3rd, 4th, 5th and 6th sittings held on the 7th, 8th, 20th, 21st and 22nd December, 1971 respectively, the Committee heard the evidence given by the individuals/Federations etc.

7. At their 7th and 8th sittings held on the 24th and 28th January, 1972, respectively, the Committee had a general discussion on the constitutional validity of the Bill and also heard the views of the Minister of Law and Justice (Shri H. R. Gokhale) in this regard.

8. The Report of the Committee was to be presented by the 15th December, 1971. The Committee felt that in view of the important nature of the Bill it would not be possible to complete the various stages of the Bill within the specified time and as such decided to ask for an extension of time for the presentation of their Report upto the last day of the first week of the Budget Session (1972). Necessary motion to that effect was moved in the House and adopted on the 10th December, 1971.

At their 8th sitting held on the 28th January, 1972, the Committee had decided to sit and take up clause-by-clause consideration of the Bill some time in March, 1972. But due to pre-occupation of most of the members of the Committee with the elections to some State Assemblies and Union territories held in early March, 1972, the Committee could hold their 9th sitting only on the 15th March, 1972. At this sitting, the Committee

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 12th August 1971.

felt that as the time left for presentation of their Report was very short, it would not be possible for them to complete the various stages of the Bill by the stipulated date and as such decided to seek further extension of time upto the 10th May, 1972. Necessary motion in this behalf was moved and adopted in the House on the 17th March, 1972.

9. The Committee have also decided that the evidence given before them should be printed and laid on the Table of the House.

10. The Committee considered the Bill clause-by-clause at their 10th, 11th and 12th sittings held on the 3rd, 5th and 18th April, 1972 respectively.

11. The Committee decided that a set of memoranda|representations|notes etc. submitted by various associations|individuals|Federations etc. should be placed in Parliament Library for reference by members.

12. The Committee considered and adopted the Report on the 5th May, 1972.

13. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

14. *Clause* 2, 10 (*original clause* 9) *and clause* 21 (*original clause* 20).—These clauses seek to amend respectively the Income-tax Act, the Wealth-tax Act and the Gift-tax Act to make provisions therein for reference of the valuation of any capital asset, asset or property to a valuation officer. The Committee feel that to avoid arbitrariness on the part of the tax authorities making such references, it is desirable to spell out the guidelines on the basis of which such references may be made. The Committee recommend that for this purpose, a distinction should be made between cases in which the valuation is based on the estimate of a registered valuer and cases in which it is not so based. In the first category, of cases, a reference may be made to the valuation officer if the tax authority considers that the estimate made by the registered valuer requires an upward revision. In the second category of cases, a reference may be made if the tax authority considers it necessary to do so on account of the nature of the capital asset, asset or property and other relevant circumstances, or if he is of opinion that the fair market value of the capital asset, asset or property exceeds the value claimed or returned by such percentage of the claimed or returned value or by such amount as may be prescribed by rules. New section 55A, as proposed to be inserted in the Income-tax Act by clause 2 of the Bill, sub-section (1) of new section 16A, as proposed to be inserted in the Wealth-tax Act by clause 10 of the Bill and new sub-section (6) as proposed to be inserted in section 15 of the Gift-tax Act by clause 21 of the Bill, have been amended accordingly.

15. *Clause* 4.—The Committee have made certain amendments to this clause as explained below:—

(1) *Section* 269*A*—*clause* (*a*) *and clause* (*b*) [*original clause* (*g*)]—Under the existing provisions of the Bill, an immovable property can be acquired only when such property has been transferred by sale and not by way of exchange. If transfers of immovable properties by way of exchange were excluded from the purview of the Bill, unscrupulous persons could easily circumvent the acquisition of immovable property

by paying the consideration for the transfer of such property partly in cash and partly in kind or wholly in kind. The Committee, therefore, feel that the transfer of immovable property by way of exchange must also be brought within the the ambit of the provisions of the Bill. Accordingly, the definition of the expression "transfer" has been amended so as to include transfers by way of exchange also.

As a consequence thereof, the existing definition of the expression "apparent consideration" has also been amended so as to include consideration for transfers by way of exchange as well.

Clause (e).—The Committee feel that the proposed definition of the expression "immovable property" is too narrow in its scope. In order to ensure that the provisions relating to acquisition of immovable property are not defeated by transfer of a part of a building or by composite transfers of land, building, plant and machinery etc., the definition should be enlarged so as to cover part of a building or any rights therein and should also include machinery, plant, furniture, fittings or other things where such machinery, plant etc., is transferred along with any land or building or part of a building.

The definition of the expression "immovable property" has, therefore, been amended accordingly.

The Committee in principle accepted that it was essential to bring within the ambit of this legislation transfers of flats in the buildings owned by the Housing Co-operative Societies. It would otherwise leave a large loop-hole in the law. It was, however, pointed out to the Committee that in case of Housing Co-operative Societies it is not the flats which are sold or transferred as such. It is usually the shares in the Co-opperative Societies which are transferred: the right of ownership of shares being virtually the right of ownership of the flats. Since, however, transfers of shares do not require registration and the entire legislation rests on registration as the starting point, the flats of Housing Co-operative Societies are left out for the time being.

The Committee, therefore, recommend that the Registration Act and other relevant laws should be amended to treat transfers of shares of Housing Co-operative Societies as immovable property requiring registration on transfer.

New clause (q).—The Committee note that the expression "person interested" occurs in the proposed sections 269D(2)(a) and 269E(1) of the Bill. The Committee feel that a definition of the expression so as to include all persons claiming or entitled to claim an interest in the compensation payable on account of the acquisition of that property under the provisions of the Bill, may be added. A definition of the expression "person interested" has, therefore, been added accordingly.

(ii) *Section 269C.*—The Committee feel that while safeguards should be provided for ensuring that powers of acquisition are not misused, special rules of evidence should be provided to ensure effective operation of the law. By way of safeguards, the Committee recommend that the competent authority should record his reasons in writing before initiating acquisition proceedings and that he should not initiate proceedings in any case unless he is of opinion that the fair market value of the property

exceeds its apparent consideration by more than fifteen per cent of such consideration.

The Committee have given anxious consideration to the question as to whether any special rules of evidence should be provided for. As tax evasion and dealings in black money take place in an utterly clandestine manner, the Committee feel that unless special rules of evidence are made applicable, it will not be possible to deal effectively with the evils of tax evasion and black money. The Committee accordingly recommend that the fact that the fair market value of any property transferred exceeds its apparent consideration by more than twenty-five per cent of such apparent consideration shall, in proceedings for acquisition of such property, be deemed to be conclusive proof of the fact that the consideration for the property has not been truly stated in the instrument of transfer. The Committee also recommend that the rebuttable presumption provided in section 269F(8)(a), namely, that where any property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed that the consideration for the transfer has not been truly stated with the object of evasion of tax, should apply at all stages of the acquisition proceedings and not merely at the stage of passing the order of acquisition.

Clause 269C has been amended to provide for the aforementioned safeguards and special rules of evidence.

(iii) *Section 269D.*—(a) The Committee recommend that the period of limitation for initiating proceedings for acquisition of any property should be computed from the end of the month in which the instrument of transfer is registered as that would enable parties to compute the period of limitation with certainty and avoid unnecessary anxiety. Proviso to sub-section (1) has been amended accordingly.

With a view to avoiding delays in registration and the consequent postponement of the running of the period for initiation of acquisition proceedings, the Committee recommend that Government might examine the feasibility of amending the Registration Act, 1908, for fixing a time-limit within which documents should be registered thereunder.

(b) The Committee feel that notice of initiation of acquisition proceedings should be served on the transferor also as he is a party to the transfer. Sub-section (2)(a) has been amended accordingly.

(iv) *Section 269E.*—The Committee feel that the period of limitation for filing objections is not adequate. The Committee recommend that in the case of persons on whom notice of initiation of proceedings is required to be served, it should be forty-five days from the date of publication of the notice in the Official Gazette or thirty days from the date of service of notice, whichever period expires later. In other cases, it should be forty-five days from the date of publication of the notice in the Official Gazette. Sub-section (1) has been amended accordingly.

The Committee recommend that in place of sub-section (3), which has become redundant in view of their recommendation for inserting a definition of 'person interested' in section 269A, a new sub-section should be substituted. The new sub-section should make it clear that objection can be made under the section to the effect that the fair market value of any property sought to be acquired does not exceed its apparent consideration by more than 25 per cent of such apparent consideration and that there-

fore the special rule as to conclusive proof provided in section 269C(2)(a) does not apply.

(v) *Section 269F [Sub-section (2)].*—The amendment made in sub-section (2) is of a drafting nature and is consequent upon the addition of new section 269O.

Sub-section (6).—The Committee are of the opinion that it should be made clear that the competent authority should make an order for acquisition only after hearing the objections, if any, and after taking into account all the relevant material on record. The opening portion of the sub-section has been amended accordingly. The amendment made in clause (b) of the sub-section is consequent upon the second proviso added to section 269C(1). The amendments made in clause (c) of the sub-section are of a drafting nature.

New sub-section (8).—The Committee recommend that orders of the competent authority in respect of any property should be served on the transferor, transferee and the persons who preferred objections against the acquisition of such property. A new sub-section (8) has been added accordingly, and the existing sub-section (8) has been renumbered as sub-section (9).

Sub-section (9) [*original sub-section* (8)].—The amendments made are of a consequential or drafting nature. Clause (a) of this sub-section has been omitted in view of the provision made in clause (b) of sub-section (2) of section 269C.

(vi) *Section 269G and section 269H (original section 269G).*—The Committee feel that appeals against the orders of the competent authority should lie not to an administrative body as provided in the Bill, but to a judicial forum. The Committee feel that it would be patently unfair and unreasonable if a person who has a right to go in appeal to a judicial forum, namely, the Income-tax Appellate Tribunal against an order of assessment for even a comparatively small amount is denied a right of appeal to such a forum against an order for acquisition of property of substantial value. The Committee,therefore, recommend that appeals against the orders of the competent authority should lie to the Income-tax Appellate Tribunal. The Committee, however, feel that the procedure of making reference to High Court on questions of law arising out of the orders of the Appellate Tribunal in assessment cases results in delays and is not suited to the acquisition cases. The Committee, therefore, recommend that in acquisition cases, the parties concerned should be given a right to prefer directly an appeal to the High Court on any question of law against the orders of the Appellate Tribunal.

Two new sections—(section 269G and section 269H), providing for appeals to the Appellate Tribunal and to the High Court, respectively, have accordingly been substituted for section 269G.

(vii) *Section 269I (original section 269H).*—The amendments made in the *Explanation* to sub-section (1) are consequent upon the new provisions as to appeals to the Appellate Tribunal and High Court.

(viii) *Section 269K (original section 269J).*—The Committee recommend that in conformity with the provisions made in the Finance Bill, 1972, the rate of interest should be increased from 9 per cent to 12 per cent. Sub-section (*4*) has been amended accordingly. The other amendments made in the section are of a consequential nature.

(ix) *Section 269L (original section 269K).*—The omission of sub-section (*3*) is consequent upon the insertion of new section 269O. The other amendments made in this section are also of a consequential nature.

(x) *Section 269M (original section 269L) and section 269N (original section 269M).*—The amendments made in these sections are of a drafting or consequential nature.

(xi) *New section* 269O.—The Committee recommend that it should be made clear that a person entitled to appear before the competent authority or the Appellate Tribunal may, except where he is required to attend personally, attend by an authorised representative within the meaning of section 288 of the Income-tax Act. The Committee also recommend that the cases in which a person may attend by an authorised representative or a registered valuer may be set out in a separate section. Accordingly, new section 269O has been added.

(xii) *Section 269P (original section 269N).*—The amendments made are of a consequential nature.

(xiii) *New section* 269Q.—The Committee feel that the provisions as to acquisition should not apply to transfers made to relatives out of natural love and affection as in such cases consideration less than the fair market value is accepted not with a view to evasion of tax but on account of natural love and affection between the parties. Accordingly new section 269Q has been added.

16. *New clause* 6.—The Committee feel that an assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, otherwise than when he is required to attend personally, should be allowed to be represented by a registered valuer. Accordingly, a clause has been added for inserting a new section 287A in the Income-tax Act.

17. *Clause* 10 *(original clause* 9).—The amendments made in this clause are for providing the guidelines on the basis of which a Wealth-tax Officer may make a reference of the valuation of any asset to a Valuation Officer. These have been explained in paragraph 14 *ante.*

18. *Clause* 14 *(original clause* 13).—The Committee recommend that new section 34AA proposed to be inserted by this clause in the Wealth-tax Act be amended to provide that a person required to attend before a Wealth-tax authority or the Appellate Tribunal in connection with the valuation of any asset may, except where he is required to attend in person, attend by a registered valuer. The section has been amended accordingly.

19. *Clause* 16 *(original clause* 15).—The Committee feel that mere imprisonment upto six months or mere fine may not be adequate punishment in some cases of false verification by a registered valuer. The Committee, therefore, recommend that it should be open to the Court to impose both the punishments. Sub-section (2B) as proposed to be

inserted in section 36 of the Wealth-tax Act has been amended accordingly. The other amendment made in the sub-section is for correcting a patent mistake which had the effect of excluding the requirement as to *mens rea*.

20. *Clause* 18 (*original clause* 17).—The Committee note that under section 38A which this clause seeks to insert in the Wealth-tax Act, a Valuation Officer to whom a reference has been made in connection with the assessment of any assessee has powers to enter only a building or other place occupied by the assessee. The Committee feel that in cases where the assessee owns or is in occupation of, any land or owns any building or other place, the Valuation Officer should also have powers to enter such land, building or other place. Sub-section (1) (b) of new section 38A has been amended accordingly.

21. *Clause* 21 (*original clause* 20).—The amendments made in this clause are for providing the guidelines on the basis of which a Gift-tax Officer may make a reference of the valuation of any property to a valuation officer and the same have been explained in paragraph 14 *ante*.

22. *New clause* 24.—The Committee feel that as under the Income-tax Act (*vide* clause 6, new section 287A, explained in paragraph 16 *ante*.), the facility of appearance by registered valuers in connection with matters relating to valuation should be extended to assessees under the Gift-tax Act. A new section 43A has, therefore, been added accordingly.

23. *Clause* 1 *and Enacting Formula*.—The amendments made are of a formal nature.

24. The Select Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
May 10, 1972.
Vaisakha 20, 1894 (S.)

BHAGWAT JHA AZAD,
Chairman,
Select Committee.

MINUTES OF DISSENT

I

The fact that tax evasion, accumulation and circulation of black money have assumed menacing proportions, is agreed on all hands. Direct Taxes Enquiry Committee had submitted an interim report dealing with this question. The final report also has since been received by the Government of India. Yet all that the Government could think of in this regard is this halting and all too restricted bill on tax evasion with too narrow a scope to be of any significance.

2. This Bill is confined to acquisition of immovable properties in certain cases of transfer to counteract evasion of tax and is in the nature of a deterrent. One form of concealment of accumulated black money which runs into thousands of crores of rupees is immovable property. The Government should strive not only to counteract tax evasion but also acquire all the ill-gotten wealth as resources for the benefit of development. With that in view, any amendment to taxation law must provide for acquisition of all immovable property undervalued in assessment in order to evade tax.

3. Even as it is, according to this it is legally not obligatory to acquire every property transferred for an apparent consideration which is less than the fair market value of the property. At best this Bill is only an enabling legislation. For strict implementation of this law, it has to depend on the policies of the Government. It should be binding on the Government by law, to enforce this legislation in letter and in spirit.

4. An amendment to taxation law aiming at counteracting tax evasion should not lay itself open to evasion. It is significant to note that people could already think of half a dozen ways of circumventing this Bill. It is regrettable that the Committee have not made any serious attempt to plug such possible loopholes.

5. Section 269C, sub-section (1) of Chapter XXA contemplates that any immovable property of a fair market value exceeding twenty-five thousand rupees only can be liable for initiation of proceedings for the acqusition of such property, transferred for an apparent consideration, less than the market value by fifteen per cent. Here the stipulation of a minimum of twenty-five thousand rupees value opens the way for evading this legislation. Immovable properties of market value exceeding twenty-five thousand rupees can be parcelled out in such manner that each part is of the market value of less than twenty-five thousand rupees for transfer at an apparent consideration. This minimum is prescribed in the name of the small man only to provide a loophole for the big. No minimum need be fixed, and the words "exceeding twenty-five thousand rupees" may be omitted without any serious consequences on the small man who does not acquire black money nor is capable of utilising it.

6. Again in Section 269D, sub-section (1) of the same Chapter it is provided that no proceedings shall be initiated in respect of an immovable

property after expiry of six months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act of 1908. There is no denying the fact that it will be wholesome if proceedings are initiated without any delay whatsoever. If necessary even penalty may be provided for such delays for those concerned. But to provide that no proceedings shall be initiated after expiry of six months, coupled with lack of any provision to deal with wanton delays, again opens out the way for evading this legislation. It is not uncommon that officials collude with defrauders for a consideration especially when there is no watch dog over delays in initiating proceedings. The plea that every transferor and transferee will be passing through anxious six months is to say everyone is a fraud trying to evade tax and richly deserves to be punished by such anxiety without time limit. The principle should be that no one who attempts to evade taxes in transfer of immovable property shall go without proceedings being initiated as in any other criminal offence by lapse of time.

7. The whole bill becomes a farce and a mockery when you go to Section 269J, sub-section (1) of the same Chapter which provides 15 percent solatium for acquiring the property. The Select Committee did give serious thought to this provision and sought the advice of the Law Ministry. There was a general feeling that it is out of place in a bill of penalty for evasion of taxes. But ultimately the filmsy argument that it may be retained as a measure of abundant caution against the whole legislation being struck down by the court on the ground that discriminatory use by the Government was possible while the Land Acquisition Act provides for 15 per cent solatium, carried the day. This is a serious matter where this line of least resistance should not have been taken but fought out if necessary with the judiciary.

8. It is now hoped that this Bill which has emerged from the Select Committee will be passed by both the Houses of Parliament with the improvements suggested above and without delay and will thus soon become the law of the land.

K. BALADHANDAYUTHAM.

NEW DELHI;
May 8, 1972.
Vaisakha 18, 1894 (*S.*)

II

1. I have given extremely anxious consideration to the Report of the Select Committee and by and large I am in respectful agreement with what the Committee has to report on the bill. I have, however, to regretfully dissent on two very fundamental provisions of the Bill referred to in the Report. One of the objects of the Bill basically being to deter citizens from tax evasion by under-statement of value of immovable properties at the time of transfer, its commendability and laudability could not in theory be disputed. In practice, however, stringent provisions made more drastic in fiscal legislation are skilfully ignored by tax dodgers and evaders who manage by necessary ways and means to do so. It is the unsuspecting and honest citizens who get embroiled in unjust, unwarranted and protracted litigation and other harassment inherent in Tax fraud laws made to arrest tax evasion. And every effort

needs to be made to avoid this, hence I am constrained to write this note of dissent.

2. This tax legislation, in my opinion as now recommended, leaves a wide margin of honest and unsuspecting assessees being subjected to harassment, expenditure and protracted litigation. This would be inevitable upon the subjective decision of the authorities based on an unrealistic and arbitrary determination of fair market value of immovable properties to be transferred.

3. Clause 4 seeks to insert a new chapter, chapter XXA in the Income-tax Act, 1961. The said chapter will contain new sections 269A to Section 269S proposed by the Bill. The proposed section 269A(d) defines "fair market value" in relation to immovable property transferred as the price that "the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property", but fails to clearly specify how such fair market value is to be determined. The entire legislation now proposed vests vast powers in the competent authority to acquire immovable property when there is a difference between the "fair market value" and the apparent consideration mentioned in the instrument of transfer on the mere valuation report made by the valuation officer of the department. The department's valuation officer's opinion may drastically differ from the professional opinion of any number of authorised professional valuers and yet acquisition proceedings and the harassment to the citizen inherent in them can be started by the department on its own valuation of the property transferred. This in my humble opinion places an unfair and unjust weightage on the opinion of the department's valuation officer.

4. The said definition, however, is so utterly vague and ambiguous and obscure that even the most competent expert in the field of valuation of properties will fail to come to conclusions as to what is the fair market value in accordance with its definition with any degree of precision much less with any degree of certainty. It is, therefore, my humble but considered opinion that the law itself must indicate in clear and unambiguous terms the criteria and guidelines which would form the basis of determining the "fair market value". The fair market value must not be left to be the sport of subjective tests used by valuers in search of the price the property would fetch if sold in the open market. Statutory criteria and guidelines must make the concept of fair market value more precise.

5. There are innumerable divergent and heterogenous circumstances which are taken into consideration while transferring immovable property that unless some precise criteria or guidelines as mentioned above are clearly prescribed by law, even the most honest and unsuspecting straight-forward citizen will be harassed by the provisions of this Bill. To say that a transaction involving transfer of immovable properties in which intentions are *bona fide* or honest will be outside the purview of this legislation is, in my opinion, an over simplification of the problem. *Therefore the definition of fair market value must be made more comprehensive, definite and easily ascertainable by any honest citizen.*

6. I also disagree with the Report of this committee on the proposed section 269C. The competent authority in terms of the said section is

now vested with authority to initiate acquisition proceedings if he has reason to believe that any immovable property of fair market value exceeding Rs. 25,000/- has been transferred for an apparent consideration untruly mentioned in the instrument of transfer and is motivated by consideration of facilitating reduction or evasion of tax liability of the transferor or for facilitating the concealment of any income or money or other assets which should have been disclosed by the transferee for purposes of the Income-tax Act and the Wealth-tax Act.

7. Such a provision will take even a well meaning and bonafide transferor of immovable property by surprise. In my opinion it was necessary in the drastic legislation of the type which is now contemplated, to make suitable provision for citizens, who on making appropriate payment could get the department's opinion as to the "fair market value" of the property sought to be transferred prior to sale. So that if the prospective seller found himself landing into difficulties, without intending to evade tax, he could either decide not to sell or buy at all, or revise the sale price or could go ahead with the sale, rejecting the valuation of the department in the hope that his own valuation being honest will prevail in appeal. In my opinion, therefore, section 269C should have contained appropriate provisions for pre-verification as mentioned hereinabove.

8. An eminent commentator on Tax Law observes that "the utter waste of intelligence and labour on the part of both the public and the income-tax department entailed by perennial stream of amendments and complexities of our fiscal law is truly beyond belief."

Such amendments were made until a few years ago in the name of simplification which added to the complexities of the law, making it incomprehensible. Now the amendments are being made to make the tax laws more drastic in the name of unearthing coloured money which only makes its dyedeeper. But that is not the whole misfortune, there is something worse. And it is that with these stringent provisions while well-to-do tax dodgers continue this sport of tax evasion with impunity, the punitive rod of the tax gatherer becomes more unjust and more unsparing on honest and the law abiding citizens. Such amendments have to be resisted, the outcome of the same notwithstanding.

NEW DELHI; PILOO MODY.
May 8, 1972.
Vaisakha 18, 1894 (S.)

THE TAXATION LAWS (AMENDMENT) BILL, 1971

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title and commencement.

CHAPTER II

AMENDMENTS TO THE INCOME-TAX ACT, 1961

2. Insertion of new section 55A.
3. Amendment of section 254.
4. Insertion of new Chapter XXA.
5. Insertion of new section 281A.
6. Insertion of new section 287A.

CHAPTER III

AMENDMENTS TO THE WEALTH-TAX ACT, 1957

7. Amendment of section 2.
8. Amendment of section 7.
9. Insertion of new section 12A.
10. Insertion of new section 16A.
11. Amendment of section 23.
12. Amendment of section 24.
13. Amendment of section 26
14. Insertion of new Chapter VIIB.
15. Amendment of section 35.
16. Amendment of section 36.
17. Amendment of section 37.
18. Insertion of new section 38A.
19. Amendment of section 46.

CHAPTER IV

AMENDMENTS TO THE GIFT-TAX ACT, 1958

20. Amendment of section 2.
21. Amendment of section 15.
22. Amendment of section 23.
23. Amendment of section 25.
24. Insertion of new section 43A.

CHAPTER V

MISCELLANEOUS

25. Saving and special provision.

BILL NO. 115-A OF 1971

THE TAXATION LAWS (AMENDMENT) ACT, 1971

(AS REPORTED BY THE SELECT COMMITTEE)

[*Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

further to amend the Income-tax Act, 1961, *the Wealth-tax Act,* 1957 *and the Gift-tax Act,* 1958.

BE it enacted by Parliament in the *Twenty-third* Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Taxation Laws (Amendment) Act, 1972.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENTS TO THE INCOME-TAX ACT, 1961

Insertion of new section 55A.

2. In the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), after section 55, the following section shall be inserted, namely:— 43 of 1961.

Reference to Valuation Officer.

'55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Income-tax Officer may refer the valuation of the capital asset to a Valuation Officer—

(*a*) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Income-tax Officer is of opinion that the value so claimed is less than its fair market value;

(*b*) in any other case, if the Income-tax Officer is of opinion—

(*i*) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or

(*ii*) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

and where any such reference is made, the provisions of sub-sections (*2*), (*3*), (*4*), (*5*) and (*6*) of section 16A, clauses (*ha*) and (*i*) of sub-section (*1*) and sub-sections (*3A*) and (*4*) of section 23, sub-section (*5*) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 shall, with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Wealth-tax Officer under sub-section (*1*) of section 16A of that Act. 27 of 1957.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957.'. 27 of 1957

Amendment of section 254.

3. In section 254 of the Income-tax Act, sub-section (*1A*) shall be omitted.

Insertion of new Chapter XXA.

4. In the Income-tax Act, after Chapter XX, the following Chapter shall be inserted, namely:—

'CHAPTER XXA

ACQUISITION OF IMMOVABLE PROPERTIES IN CERTAIN CASES OF TRANSFER TO COUNTERACT EVASION OF TAX

Definitions.

269A. In this Chapter, unless the context otherwise requires,—

(*a*) "apparent consideration", in relation to any immovable property transferred, means,—

(*i*) if the transfer is by way of sale, the consideration for such transfer as specified in the instrument of transfer;

(*ii*) if the transfer is by way of exchange.—

(*A*) in a case where the consideration for the transfer consists of a thing or things only, the price that such thing or things would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer;

(*B*) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer and such sum;

(*b*) "competent authority" means an Assistant Commissioner of Income-tax authorised by the Central Government under section 269B to perform the functions of a competent authority under this Chapter;

(c) "court" means a principal civil court of original jurisdiction unless the Central Government has appointed (as it is hereby authorised to do) any special judicial officer within any specified local limits to perform the functions of the court under this Chapter;

(d) "fair market value", in relation to any immovable property transferred, means the price that the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property;

(e) "immovable property" means any land or any building or part of a building, and includes, where any land or any building or part of a building is transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation.—For the purposes of this clause, land, building, part of a building, machinery, plant, furniture, fittings and other things include any rights therein;

(f) "instrument of transfer" means the instrument of transfer
16 of 1908 registered under the Registration Act, 1908;

(g) "person interested", in relation to any immovable property, includes all persons claiming, or entitled to claim, an interest in the compensation payable on account of the acquisition of that property under this Chapter;

(h) "transfer", in relation to any immovable property, means transfer of such property by way of sale or exchange.

Competent authority.

269B. (1) The Central Government may, by general or special order published in the Official Gazette,—

(a) authorise as many Assistant Commissioners of Income-tax, as it thinks fit, to perform the functions of a competent authority under this Chapter; and

(b) define the local limits within which the competent authorities shall perform their functions under this Chapter.

(2) In respect of any function to be performed by a competent authority under any provision of this Chapter in relation to any immovable property referred to in section 269C, the competent authority referred to therein shall,—

(a) in a case where such property is situate within the local limits of the jurisdiction of only one competent authority, be such competent authority;

(b) in a case where such property is situate within the local limits of the jurisdiction of two or more competent authorities, be the competent authority empowered to perform such functions in relation to such property in accordance with rules made in this behalf by the Board under section 295.

(3) No person shall be entitled to call in question the jurisdiction of a competent authority in respect of any immovable property after the expiry of thirty days from the date on which such competent authority initiates proceedings under section 269D for the acquisition of such property.

(4) Subject to the provisions of sub-section (3), where the jurisdiction of a competent authority is questioned, the competent authority shall, if satisfied with the correctness of the claim, by order in writing, determine the question accordingly and if he is not so satisfied, he shall refer the question to the Board and the Board shall, by order in writing, determine the question.

Immovable property in respect of which proceedings for acquisition may be taken.

269C. (1) Where the competent authority has reason to believe that any immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this Chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of—

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer; or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income-tax Act, 1922, or this Act or the Wealth-tax Act, 1957, 11 of 1922. 27 of 1957.

the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter:

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so:

Provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent consideration therefor by more than fifteen per cent. of such apparent consideration.

(2) In any proceedings under this Chapter in respect of any immovable property,—

(a) where the fair market value of such property exceeds the apparent consideration therefor by more than twenty-five per cent. of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer;

(b) where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (a) or clause (b) of sub-section (1).

Preliminary notice.

269D. (1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in section 269C by notice to that effect published in the Official Gazette:

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of six months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908:

16 of 1908.

Provided further that—

(*a*) in a case where it is determined under sub-section (*4*) of section 269B by the competent authority who has initiated proceedings for the acquisition of any immovable property under this Chapter or by the Board that such competent authority has no jurisdiction to initiate such proceedings, the competent authority having jurisdiction may initiate such proceedings within—

(*i*) the period of six months specified in the foregoing proviso; or

(*ii*) a period of thirty days from the date of such determination,

whichever period expires later;

(*b*) in a case where proceedings for the acquisition of any immovable property under this Chapter could not be initiated during any period of time by reason of any injunction or order of any court prohibiting the initiation of such proceedings or preventing the examination of documents or other materials required to be examined for the purpose of determining whether such proceedings should be initiated, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded in computing the period during which such proceedings may be initiated under this sub-section.

(*2*) The competent authority shall—

(*a*) cause a notice under sub-section (*1*) in respect of any immovable property to be served on the transferor, the transferee, the person in occupation of the property, if the transferee is not in occupation thereof, and on every person whom the competent authority knows to be interested in the property;

(*b*) cause such notice to be published—

(*i*) in his office by affixing a copy thereof to a conspicuous place;

(*ii*) in the locality in which the immovable property to which it relates is situate, by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality.

Objections.

269E. (*1*) Objections against the acquisition of the immovable property in respect of which a notice has been published in the Official Gazette under sub-section (*1*) of section 269D may be made—

(*a*) by the transferor or the transferee or any other person referred to in clause (*a*) of sub-section (*2*) of that section, within a period of forty-five days from the date of such publication or a period of thirty days from the date of service of notice on such person under the said clause, whichever period expires later;

(*b*) by any other person interested in such immovable property, within forty-five days from the date of such publication.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing.

(3) For the removal of doubts, it is hereby declared that objection may be made under sub-section (1) that the provisions of clause (a) of sub-section (2) of section 269C do not apply in relation to any immovable property on the ground that the fair market value of such property does not exceed the apparent consideration therefor by more than twenty-five per cent. of such apparent consideration.

Hearing of objections.

269F. (1) The competent authority shall fix a day and place for the hearing of the objections made under section 269E against the acquisition under this Chapter of any immovable property, and shall give notice of the same to every person who has made such objection:

Provided that such notice shall also be given to the transferee of such property even if he has not made any such objection.

(2) Every person to whom a notice is given under sub-section (1) shall have the right to be heard*** at the hearing of the objections.

(3) The competent authority shall have the power to adjourn the hearing of the objections from time to time.

(4) The competent authority may, before disposing of the objections, make such further inquiry as he thinks fit.

(5) The decision of the competent authority in respect of the objections heard shall be in writing and shall state the reasons for the decision with respect to each objection.

(6) If after hearing the objections, if any, and after taking into account all the relevant material on record, the competent authority is satisfied that,—

(a) the immovable property to which the proceedings relate is of a fair market value exceeding twenty-five thousand rupees;

(b) the fair market value of such property exceeds the apparent consideration therefor by more than fifteen per cent. of such apparent consideration; and

(c) the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (a) or clause (b) of sub-section (1) of section 269C,

he may, after obtaining the approval of the Commissioner, make an order for the acquisition of the property under this Chapter.

Explanation.—In this sub-section, "Commissioner", in relation to a competent authority, means such Commissioner as the Board may, by general or special order in writing, specify in this behalf.

(7) If the competent authority is not satisfied as provided in sub-section (6), he shall, by order in writing, declare that the property will not be acquired under this Chapter.

(8) The competent authority shall serve a copy of his order under sub-section (6) or sub-section (7), as the case may be, on the transferor, the transferee and on every person who has made objections against such acquisition under section 269E.

(9) In any proceedings under this Chapter in respect of any immovable property, no objection shall be entertained on the ground

that although the apparent consideration for the property is less than the fair market value of the property on the date of the execution of the instrument of transfer, the consideration as agreed to between the parties has been truly stated in the instrument of transfer because such consideration was agreed to having regard to the price that such property would have ordinarily fetched on sale in the open market on the date of the conclusion of the agreement to sell the property, except where such agreement has been registered under the Registration Act, 1908.

16 of 1908.

Appeal against order for acquisition.

269G. (1) An appeal may be preferred to the Appellate Tribunal against the order for the acquisition of any immovable property made by the competent authority under section 269F,—

(a) by the transferor or the transferee or any other person referred to in sub-section (8) of that section, within a period of forty-five days from the date of such order or a period of thirty days from the date of service of a copy of the order on such person under the said sub-section, whichever period expires later;

(b) by any other person interested in such immovable property, within forty-five days from the date of such order:

Provided that the Appellate Tribunal may, on an application made in this behalf before the expiry of the said period of forty-five days or, as the case may be, thirty days, permit, by order, the appeal to be presented within such further period as may be specified therein if the applicant satisfies the Appellate Tribunal that he has sufficient cause for not being able to present the appeal within the said period of forty-five days or, as the case may be, thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of one hundred and twenty-five rupees.

(3) The Appellate Tribunal shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the competent authority.

(4) The Appellate Tribunal may, after giving the appellant and the competent authority an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal may, at any time within thirty days from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4) and shall make such amendment if the mistake is brought to its notice by the appellant or the competent authority:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

(6) The Appellate Tribunal shall send a copy of any orders passed under this section to the appellant and to the Commissioner.

(7) Save as provided in section 269H, orders passed by the Appellate Tribunal on appeal shall be final.

(8) Every appeal under this section shall be disposed of as expeditiously as possible and endeavour shall be made to dispose of every such appeal within ninety days from the date on which it is presented.

(9) The provisions of section 255 [except sub-section (3) thereof] shall, so far as may be, apply in relation to the powers, functions and proceedings of the Appellate Tribunal under this section as they apply in relation to the powers, functions and proceedings of the Appellate Tribunal under Chapter XX.

Appeal to High Court.

269H. (1) The Commissioner or any person aggrieved by any order of the Appellate Tribunal under section 269G may, within sixty days of the date on which he is served with notice of such order under that section, prefer an appeal against such order to the High Court on any question of law:

Provided that the High Court may, on an application made in this behalf before the expiry of the said period of sixty days, permit, by order, the appeal to be presented within such further period as may be specified therein, if the applicant satisfies the High Court that he has sufficient cause for not being able to present the appeal within the said period of sixty days.

(2) An appeal under sub-section (1) shall be heard by a Bench of not less than two Judges of the High Court and the provisions of section 259 shall apply in relation to any such appeal as they apply in relation to a case referred to the High Court under section 256.

(3) The costs of the appeal shall be in the discretion of the High Court.

Vesting of property in Central Government.

269I. (1) As soon as may be after the order for acquisition of any immovable property made under sub-section (6) of section 269F becomes final, the competent authority may, by notice in writing, order any person who may be in possession of the immovable property to surrender or deliver possession thereof to the competent authority or any other person duly authorised in writing by the competent authority in this behalf, within thirty days of the date of the service of the notice.

Explanation.—For the purposes of this sub-section, an order for the acquisition of any immovable property (hereafter in this *Explanation* referred to as the order for acquisition) made under sub-section (6) of section 269F becomes final,—

(a) in a case where the order for acquisition is not made the subject of an appeal to the Appellate Tribunal under section 269G, upon the expiry of the period during which such appeal may be presented under that section;

(b) in a case where the order for acquisition is made the subject of an appeal to the Appellate Tribunal under section 269G,—

(*i*) if the order for acquisition is confirmed by the Appellate Tribunal and the order of the Appellate Tribunal is not made the subject of an appeal to the High Court under section 269H, upon the expiry of the period during which such appeal may be presented under that section to the High Court;

(*ii*) if the order of the Appellate Tribunal is made the subject of an appeal to the High Court under section 269H, upon the confirmation of the order for acquisition by the High Court.

(*2*) If any person refuses or fails to comply with the notice under sub-section (*1*), the competent authority or other person duly authorised by the competent authority under that sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

(*3*) Notwithstanding anything contained in sub-section (*2*), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (*1*), requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(*4*) When the possession of the immovable property is surrendered or delivered under sub-section (*1*) to the competent authority or a person duly authorised by him in that behalf or, as the case may be, when the possession thereof is taken under sub-section (*2*) or sub-section (*3*) by such authority or person, the property shall vest absolutely in the Central Government free from all encumbrances:

Provided that nothing in this sub-section shall operate to discharge the transferee or any other person (not being the Central Government) from liability in respect of such encumbrances and, notwithstanding anything contained in any other law, such liability may be enforced against the transferee or such other person by a suit for damages.

Compensation.

269J. (*1*) Where any immovable property is acquired under this Chapter, the Central Government shall pay for such acquisition compensation which shall be a sum equal to the aggregate of the amount of the apparent consideration for its transfer and fifteen per cent. of the said amount.

(*2*) Notwithstanding anything contained in sub-section (*1*),—

(*a*) where, after the transfer to the transferee of the property referred to in that sub-section but before the vesting of the property in the Central Government, the property has been damaged (otherwise than as a result of normal wear and tear), the compensation payable under that sub-section shall be reduced by such amount as the competent authority and the persons entitled to the compensation may agree within fifteen days of the vesting of the property in the Central Government or in default of such agreement as the court may, on a reference made to it in this behalf by the competent authority or by any person duly authorised for the purpose by the competent authority, determine to be the amount that may have to be expended for restoring the property to the condition in which it was at the time of such transfer;

(*b*) where, after the transfer of such property to the transferee but before the date of publication in the Official Gazette of the notice in respect of such property under sub-section (*1*) of section 269D, any improvements have been made to the property, whether by way of addition or alteration or in any other manner, the compensation payable in respect of such property under sub-section (*1*) shall be increased by such amount as the competent authority and the persons entitled to the compensation may agree within fifteen days of the vesting of the property in the Central Government or in default of such agreement as the court may, on a reference made to it in this behalf by the competent authority or by any person duly authorised for the purpose by the competent authority, determine to be the amount spent for making such improvements.

(*3*) Every reference under clause (*a*) or clause (*b*) of sub-section (*2*) shall be made within thirty days of the date on which the immovable property to which it relates becomes vested in the Central Government or within such further period as the court may, on an application made in this behalf before the expiry of the said period and on being satisfied that there is sufficient cause for doing so, allow and such reference shall state clearly the compensation payable under sub-section (*1*) in respect of the immovable property and the amount by which, according to the estimate of the competent authority, such compensation shall be reduced under clause (*a*) or, as the case may be, increased under clause (*b*), of sub-section (*2*).

(*4*) The amount by which the compensation payable under sub-section (*1*) in respect of any immovable property acquired under this Chapter falls short of the amount which would have been payable as compensation if that property had been acquired under the Land Acquisition Act, 1894, after the issue of a preliminary notice under section 4 of that Act on the date of publication in the Official Gazette of the notice in respect of the property under sub-section (*1*) of section 269D, shall be deemed to have been realised by the Central Government as a penalty from the transferee for being a party to a transfer with such object as is referred to in clause (*a*) or clause (*b*) of sub-section (*1*) of section 269C, and no penalty shall be levied for any assessment year on the transferee— 1 of 1894.

(*a*) under clause (*iii*) of sub-section (*1*) of section 271, for concealing the particulars or furnishing inaccurate particulars of so much of his income as is utilised by him for paying to the transferor, by way of consideration for the property, any amount in excess of the apparent consideration for the property, notwithstanding that such amount is included in the income of the transferee;

(*b*) under clause (*iii*) of sub-section (*1*) of section 18 of the Wealth-tax Act, 1957, for concealing the particulars or furnishing inaccurate particulars of so much of his assets as are utilised by him for paying to the transferor, by way of consideration for the property, any amount in excess of the apparent consideration for the property, notwithstanding that such assets are included in the net wealth of the transferee. 27 of 1957.

Payment or deposit of compensation.

269K. (*1*) The amount of compensation payable in accordance with the provisions of section 269J for the acquisition of any immovable property shall be tendered to the person or persons entitled thereto, as soon as may be, after the property becomes vested in the Central Government under sub-section (*4*) of section 269I:

Provided that in any case where a reference is or has to be made under sub-section (*2*) of section 269J to the court for the determination of the amount by which the compensation payable under sub-section (*1*) of that section shall be reduced or increased, the amount of such compensation as reduced or increased by the amount estimated in that behalf by the competent authority for the purposes of such reference shall be tendered as aforesaid.

(*2*) Notwithstanding anything contained in sub-section (*1*), if any dispute arises as to the apportionment of the compensation amongst persons claiming to be entitled thereto, the Central Government shall deposit in the court the compensation required to be tendered under sub-section (*1*) and refer such dispute for the decision of the court and the decision of the court thereon shall be final.

(*3*) Notwithstanding anything contained in sub-section (*1*), if the persons entitled to compensation do not consent to receive it, or if there is no person competent to alienate the immovable property, or if there is any dispute as to the title to receive the compensation, the Central Government shall deposit in the court the compensation required to be tendered under sub-section (*1*) and refer the matter for the decision of the court:

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the compensation for any immovable property acquired under this Chapter to pay the same to the person lawfully entitled thereto.

(*4*) If the Central Government fails to tender under sub-section (*1*) or deposit under sub-section (*2*) or sub-section (*3*) the whole or any part of the compensation required to be tendered or deposited thereunder within thirty days of the date on which the immovable property to which the compensation relates becomes vested in the Central Government under sub-section (*4*) of section 269I, the Central Government shall be liable to pay simple interest at the rate of twelve per cent. per annum reckoned from the day immediately following the date of expiry of the said period up to the date on which it so tenders or deposits such compensation or, as the case may be, such part of the compensation.

(*5*) Where any amount of compensation (including interest, if any, thereon) has been deposited in the court under this section, the court may, either of its own motion or on an application made by or on behalf of any party interested or claiming to be interested in such amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the immovable property in respect whereof such amount had from the sited or as near thereto as may be.

Assistance by valuation Officers.

269L. (*1*) The competent authority may,—

(*a*) for the purpose of initiating proceedings for the acquisition of any immovable property under section 269C or for the purpose of making an order under section 269F in respect of any immovable property, require a Valuation Officer to determine the fair market value of such property and report the same to him;

(*b*) for the purpose of estimating the amount by which the compensation payable under sub-section (*1*) of section *269J* in respect of any immovable property may be reduced or, as the case may be, increased under clause (*a*) or clause (*b*) of sub-section (*2*) of that section, require the Valuation Officer to make such estimate and report the same to him.

(*2*) The Valuation Officer to whom a reference is made under clause (*a*) or clause (*b*) of sub-section (*1*) shall, for the purpose of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957. 27 of 1957.

(*3*) If in an appeal under section 269G against the order for acquisition of any immovable property, the fair market value of such property is in dispute, the Appellate Tribunal shall, on a request being made in this behalf by the competent authority, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the competent authority.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957. 27 of 1957.

Powers of competent authority.

269 M. The competent authority shall have, for the purpose of this Chapter, all the powers that a Commissioner has, for the purposes of this Act, under section 131.

Rectification of mistakes.

269N. With a view to rectifying any mistake apparent from the record, the competent authority may amend any order made by him under this Chapter at any time before the time for presenting an appeal against such order has expired, either on his own motion or on the mistake being brought to his notice by any person affected by the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

Appearance by authorised representative or registered valuer.

269O. Any person who is entitled or required to attend before a competent authority or the Appellate Tribunal in any proceeding under this Chapter, otherwise than when required to attend personally for examination on oath or affirmation, may attend—

(*a*) by an authorised representative in connection with any matter;

(*b*) by a registered valuer in connection with any matter relating to the valuation of any immovable property for the purposes of this Chapter or the estimation of the amount by which the compensation payable under sub-section (*1*) of section 269J for the acquisition of any immovable property may be reduced or, as the case may be, increased in accordance with the provisions of clause (*a*) or clause (*b*) of sub-section (*2*) of that section.

Explanation.—In this section,—

(*i*) "authorised representative" has the same meaning as in section 288;

(*ii*) "registered valuer" has the same meaning as in clause (*oaa*) of section 2 of the Wealth-tax Act, 1957.

27 of 1957.

Statement to be furnished in respect of transfers of immovable property.

269P. (*1*) Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908, shall register any document which purports to transfer any immovable property belonging to any person unless a statement in duplicate in respect of such transfer, in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed, is furnished to him along with the instrument of transfer.

16 of 1908.

(*2*) The registering officer shall, at the end of every fortnight, forward to the competent authority,—

(*a*) one set of the statements received by him under sub-section (*1*) during the fortnight; and

(*b*) a return in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed in respect of documents of the nature referred to in sub-section (*1*) which have been registered by him during the fortnight.

Chapter not to apply to transfers to relatives.

269Q. The provisions of this Chapter shall not apply to or in relation to any transfer of immovable property made by a person to his relative on account of natural love and affection for a consideration which is less than its fair market value if a recital to that effect is made in the instrument of transfer.

Properties liable for acquisition under this Chapter not to be acquired under other laws.

269R. Notwithstanding anything contained in the Land Acquisition Act, 1894, or any corresponding law for the time being in force, no immovable property referred to in section 269C shall be acquired for any purpose of the Union under that Act or such law unless the time for initiation of proceedings for the acquisition of such property under this Chapter has expired without such proceedings having been initiated or unless the competent authority has declared that such property will not be acquired under this Chapter.

1 of 1894.

Chapter not to extend to State of Jammu and Kashmir.

269S. The provisions of this Chapter shall not extend to the State of 'Jammu and Kashmir'.

Insertion of new section 281A.

5. In the Income-tax Act, after section 281, the following section shall be inserted, namely:—

Effect of failure to furnish information in respect of properties held *benami*.

"281A. (*1*) No suit to enforce any right in respect of any property held *benami*, whether against the person in whose name the property is held or against any other person, shall be instituted in any court by or on behalf of a person (hereafter in this section referred to as the claimant) claiming to be the real owner of such property unless,—

(*a*) the income, if any, from such property has been disclosed in any return of income furnished by the claimant under this Act; or

(*b*) such property has been disclosed in any return of net wealth furnished by the claimant under the Wealth-tax Act, 1957; or 27 of 1957.

(*c*) notice in the prescribed form and containing the prescribed particulars in respect of the property has been given by the claimant to the Income-tax Officer.

(*2*) The Income-tax Officer shall, on an application made by any person in the prescribed manner and on payment of the prescribed fees, issue for the purposes of a suit referred to in sub-section (*1*), relevant extracts from the return furnished by such person under this Act or the Wealth-tax Act, 1957, or a certified copy of any notice given by such person under clause (*c*) of sub-section (*1*), within fourteen days from the date of receipt of the application therefor.

(*3*) This section shall not apply to any suit of a value not exceeding two thousand rupees which is tried by,—

(*a*) a Court of Small Causes constituted under the Presidency Small Cause Courts Act, 1882, or the Provincial Small Cause Courts Act, 1887; or 15 of 1882. 9 of 1887.

(*b*) a court invested with the jurisdiction of a Court of Small Causes, by or under any enactment for the time being in force, in the exercise of such jurisdiction,".

Insertion of new section 287A.

6. In the Income-tax Act, after section 287, the following section shall be inserted, namely:—

Appearance by registered valuer in certain matters.

'287A. Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may attend by a registered valuer.

Explanation.—In this section, "registered valuer" has the same meaning as in clause (*baa*) of section 2 of the Wealth-tax Act, 1957.'. 27 of 1957.

CHAPTER III

AMENDMENTS TO THE WEALTH-TAX ACT, 1957

Amendment of section 2.

7. In section 2 of the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), 27 of 1957.

(*a*) after clause (*oa*), the following clause shall be inserted, namely:—

'(*oaa*) "registered valuer" means a person registered as a valuer under section 34AB;';

(*b*) for clause (*r*), the following clause shall be substituted, namely:—

'(*r*) "Valuation Officer" means a person appointed as a Valuation Officer under section 12A, and includes a Regional Valuation Officer, a District Valuation Officer and an Assistant Valuation Officer:'.

Amendment of section 7.

8. In section 7 of the Wealth-tax Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Notwithstanding anything contained in sub-section (*1*), where the valuation of any asset is referred by the Wealth-tax Officer to the Valuation Officer under section 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date:".

Insertion of new section 12A.

9. After section 12 of the Wealth-tax Act, the following section shall be inserted, namely:—

Appointment of Valuation Officers.

"12A. (*1*) The Central Government may appoint as many Valuation Officers as it thinks fit.

(*2*) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, a wealth-tax authority may appoint as many overseers, surveyors and assessors as may be necessary to assist the Valuation Officers in the performance of their functions.".

Insertion of new section 16A.

10. After section 16 of the Wealth-tax Act, the following section shall be inserted, namely:—

Reference to Valuation Officer.

"16A. (*1*) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, the Wealth-tax Officer may refer the valuation of any asset to a Valuation Officer—

(*a*) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-tax Officer is of opinion that the value so returned is less than its fair market value;

(*b*) in any other case, if the Wealth-tax Officer is of opinion—

(*i*) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(*ii*) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

(*2*) For the purpose of estimating the value of any asset in pursuance of a reference under sub-section (*1*), the Valuation Officer may serve on the assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Valuation Officer may require.

(3) Where the Valuation Officer is of opinion that the value of the asset has been correctly declared in the return made by the assessee under section 14 or section 15, he shall pass an order in writing to that effect and send a copy of his order to the Wealth-tax Officer and to the assessee.

(4) Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessee under section 14 or section 15, or where the asset is not disclosed or the value of the asset is not declared in such return or where no such return has been made, the Valuation Officer shall serve a notice on the assessee intimating the value which he proposes to estimate and giving the assessee an opportunity to state, on a date to be specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be produced on that date such evidence as the assessee may rely in support of his objections.

(5) On the date specified in the notice under sub-section (4), or as soon thereafter as may be, after hearing such evidence as the assessee may produce and after considering such evidence as the Valuation Officer may require on any specified points and after taking into account all relevant material which he has gathered, the Valuation Officer shall, by order in writing, estimate the value of the asset and send a copy of his order to the Wealth-tax Officer and to the assessee.

(6) On receipt of the order under sub-section (3) or sub-section (5) from the Valuation Officer, the Wealth-tax Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer.".

Amendment of section 23.

11. In section 23 of the Wealth-tax Act,—

(a) in sub-section (1),—

(i) after clause (h), the following clause shall be inserted, namely:—

"(ha) objecting to any order of the Valuation Officer under section 35 having the effect of enhancing the valuation of any asset or refusing to allow the claim made by the assessee under the said section; or";

(ii) in clause (i), for the words "Wealth-tax Officer", the words "Wealth-tax Officer or Valuation Officer" shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) If the valuation of any asset is objected to in an appeal under clause (a) of sub-section (1), the Appellate Assistant Commissioner shall,—

(a) in a case where such valuation has been made by a Valuation Officer under section 16A, give such Valuation Officer an opportunity of being heard;

(*b*) in any other case, on a request being made in this behalf by the Wealth-tax Officer, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the Wealth-tax Officer.";

(*c*) in sub-section (*4*), in clause (*b*), for the words "Wealth-tax Officer", the words "Wealth-tax Officer or, as the case may be, the Valuation Officer" shall be substituted.

Amendment of section 24.

12. In section 24 of the Wealth-tax Act,—

(*a*) in sub-section (5), for the words "Provided that", the following shall be substituted, namely:—

"Provided that if the valuation of any asset is objected to, the Appellate Tribunal shall,—

(*a*) in a case where such valuation has been made by a Valuation Officer under section 16A, also give such Valuation Officer an opportunity of being heard;

(*b*) in any other case, on a request being made in this behalf by the Wealth-tax Officer, give an opportunity of being heard also to any Valuation Officer nominated for the purpose by the Wealth-tax Officer:

Provided further that";

(*b*) sub-sections (*6*), (*7*), (*8*), (*8A*) and (*8B*) shall be omitted.

Amendment of section 26

13. In section 26 of the Wealth-tax Act, in sub-section (*3*), for the words, brackets and figures "sub-sections (*3*) and (*5*) to (*10*) inclusive", the words, brackets and figures "sub-sections (*3*), (*5*), (*9*) and (*10*)" shall be substituted.

Insertion of new Chapter VII B.

14. In the Wealth-tax Act, after Chapter VIIA, the following Chapter shall be inserted, namely:—

"CHAPTER VIIB

REGISTERED VALUERS

Appearance by registered valuers.

34AA. Notwithstanding anything contained in this Act, any assessee who is entitled to or required to attend before any wealth-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, except where he is required under this Act to attend in person, may attend by a registered valuer.

Registration of valuers.

34AB. (*1*) The Board shall maintain a register to be called the Register of Valuers in which shall be entered the names and addresses of persons registered under sub-section (*2*) as valuers.

(*2*) Any person who possesses the qualifications prescribed in this behalf may apply to the Board in the prescribed form for being registered as a valuer under this section:

Provided that different qualifications may be prescribed for valuers of different classes of assets.

(3) Every application under sub-section (2) shall be verified in the prescribed manner, shall be accompanied by such fees as may be prescribed and shall contain a declaration to the effect that the applicant will—

(i) make an impartial and true valuation of any asset which he may be required to value;

(ii) furnish a report of such valuation in the prescribed form;

(iii) charge fees at a rate not exceeding the rate or rates prescribed in this behalf;

(iv) not undertake valuation of any asset in which he has a direct or indirect interest.

(4) The report of valuation of any asset by a registered valuer shall be in the prescribed form and be verified in the prescribed manner.

Restrictions on practice as registered valuer.

34AC. (1) No person, either alone or in partnership with any other person, shall practise, describe himself or hold himself out as a registered valuer for the purposes of this Act or permit himself to be so described or held out, unless he is registered as a valuer or, as the case may be, unless he and all his partners are so registered under this Chapter.

(2) No company or other body corporate shall practise, describe itself or hold itself out as registered valuers for the purposes of this Act or permit itself to be so described or held out.

Removal from register of names of valuers and restoration.

34AD. (1) The Board may remove the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit to make,—

(i) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact;

(ii) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Board, renders him unfit to be kept in the register.

(2) The Board may, on application and on sufficient cause being shown, restore to the register the name of any person removed therefrom".

Amendment of section 35.

15. In section 35 of the Wealth-tax Act,

(a) in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

"(aa) the Valuation Officer may amend any order passed by him under section 16A;";

(b) in sub-section (3), in clause (b), for the words "Appellate Assistant Commissioner", the words "Valuation Officer or the Appellate Assistant Commissioner" shall be substituted;

(c) after sub-section (6), the following sub-section shall be inserted, namely:—

"(6A) Where any amendment made by the Valuation Officer under clause (aa) of sub-section (1) has the effect of enhancing the valuation of any asset, he shall send a copy of his order to the Wealth-tax Officer who shall thereafter proceed to amend the order of assessment in conformity with the order of the Valuation Officer and the provisions of sub-section (6) shall apply accordingly.";

(d) after sub-section (7), the following sub-section shall be inserted, namely:—

"(7A) Notwithstanding anything contained in sub-section (7), where the valuation of any asset has been enhanced by the Valuation Officer under this section, the consequential amendment to the order of assessment may be made by the Wealth-tax Officer at any time before the expiry of one year from the date of the order of the Valuation Officer under this section.".

Amendment of section 36.

16. In section 36 of the Wealth-tax Act, after sub-section (2A), the following sub-section shall be inserted, namely:—

"(2B) If a person makes a statement in a verification mentioned in section 34AB which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment which may extend to six months or with fine or with both.".

Amendment of section 37.

17. In section 37 of the Wealth-tax Act,—

(a) in sub-section (1), for the words "The Wealth-tax Officer,", the words "The Wealth-tax Officer, Valuation Officer," shall be substituted;

(b) in sub-section (3), in the proviso, for the words "a Wealth-tax Officer", the words "a Wealth-tax Officer or a Valuation Officer" shall be substituted.

Insertion of new section 38A.

18. After section 38 of the Wealth-tax Act, the following section shall be inserted, namely:—

Powers of Valuation Officer, etc

"38A. (1) For the purposes of this Act, a Valuation Officer or any overseer, surveyor or assessor authorised by him in this behalf may, subject to any rules made in this behalf and at such reasonable times as may be prescribed,—

(a) enter any land within the limits of the area assigned to the Valuation Officer, or

(b) enter any land, building or other place belonging to or occupied by any person in connection with whose assessment a reference has been made under section 16A to the Valuation Officer, or

(c) inspect any asset in respect of which a reference under section 16A has been made to the Valuation Officer,

and require any person in charge of, or in occupation or possession

of, such land, building or other place or asset to afford him the necessary facility to survey or inspect such land, building or other place or asset or estimate its value or inspect any books of account, document or record which may be relevant for the valuation of such land, building or other place or asset and gather other particulars relating to such land, building or other place or asset:

Provided that no Valuation Officer, overseer, surveyor or assessor shall enter any building or place referred to in clause (*b*) or inspect any asset referred to in clause (*c*) (unless with the consent of the person in charge of, or in occupation or possession of, such building, place or asset) without previously giving to such person at least two days' notice in writing of his intention to do so.

(*2*) If a person who, under sub-section (*1*), is required to afford any facility to the Valuation Officer or the overseer, surveyor or assessor, either refuses or evades to afford such facility, the Valuation Officer shall have all the powers under sub-sections (*1*) and (*2*) of section 37 for enforcing compliance of the requirements made.".

Amendment of section 46.

19. In section 46 of the Wealth-tax Act, in sub-section (*2*), for clause (*e*), the following clauses shall be substituted, namely:—

"(*e*) the areas within which Valuation Officers may exercise jurisdiction;

(*ee*) the manner in which and the conditions subject to which Valuation Officers, overseers, surveyors and assessors may exercise their powers under sub-section (*1*) of section 38A;".

CHAPTER IV

AMENDMENTS TO THE GIFT-TAX ACT, 1958

Amendment of section 2.

20. In section 2 of the Gift-tax Act, 1958 (hereinafter referred to as the Gift-tax Act), clause (*xxv*) shall be omitted. **18 of 1958.**

Amendment of section 15.

21. In section 15 of the Gift-tax Act, after sub-section (5), the following sub-section shall be inserted, namely:—

'(*6*) Notwithstanding anything contained in section 6, for the purpose of making an assessment under this Act, the Gift-tax Officer may refer to a Valuation Officer, the valuation of any property transferred by way of gift—

(*a*) in a case where the value of the property as returned is in accordance with the estimate made by a registered valuer, if the Gift-tax Officer is of opinion that the value so returned is less than its fair market value;

(*b*) in any other case, if the Gift-tax Officer is of opinion—

(*i*) that the fair market value of the property exceeds the value of the property as returned by more than such percentage of the value of the property as returned or by more than such amount as may be prescribed in this behalf; or

(*ii*) that having regard to the nature of the property and other relevant circumstances, it is necessary so to do;

and where any such reference is made, the provisions of sub-sections (*2*), (*3*), (*4*), (*5*) and (*6*) of section 16A, clauses (*ha*) and (*i*) of sub-section (*1*) and sub-sections (*3A*) and (*4*) of section

23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957, shall, with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Wealth-tax Officer under sub-section (1) of section 16A of that Act. 27 of 1957.

Explanation.—In this sub-section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957.'. 27 of 1957.

Amendment of section 23.

22. In section 23 of the Gift-tax Act, sub-sections (6), (7) and (8) shall be omitted.

Amendment of section 25.

23. In section 25 of the Gift-tax Act, in sub-section (3), for the words, brackets and figures "sub-sections (3) and (5) to (10) inclusive", the words, brackets and figures "sub-sections (3), (5), (9) and (10)" shall be substituted.

Insertion of new section 43A.

24. In the Gift-tax Act, after section 43, the following section shall be inserted, namely:—

Appearance by registered valuer in certain matters.

'43A. Any assessee who is entitled or required to attend before any Gift-tax Authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, except where he is required under this Act to attend in person, may attend by a registered valuer.

Explanation.—In this section, "registered valuer" has the same meaning as in clause (*oaa*) of section 2 of the Wealth-tax Act, 1957.'.

CHAPTER V

MISCELLANEOUS

Saving and special provision.

25. (1) Notwithstanding the omission of sub-section (1A) of section 254 of the Income-tax Act, 1961, by section 3 of this Act, every requisition by an appellant for the making of a reference under that sub-section and every reference made under that sub-section before such omission shall be dealt with as if the said sub-section had not been omitted, and, save as aforesaid, no such reference shall be made after such omission. 43 of 1961.

(2) Notwithstanding the omission of sub-sections (6), (7), (8), (8A) and (8B) of section 24 of the Wealth-tax Act, 1957, by clause (b) of section 12 of this Act, every requisition by an appellant for the making of a reference under the said sub-section (6) and every reference made under that sub-section before such omission shall be dealt with as if the said sub-sections had not been omitted, and, save as aforesaid, no such reference shall be made after such omission. 27 of 1957.

(3) Notwithstanding the omission of sub-sections (6), (7) and (8) of section 23 of the Gift-tax Act, 1958, by section 22 of this Act, every requisition by an appellant for the making of a reference under the said sub-section (6) and every reference made under that sub-section before such omission shall be dealt with as if the said sub-sections had not been omitted, and, save as aforesaid, no such reference shall be made after such omission. 18 of 1958.

S. L. SHAKDHER,
Secy.

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